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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,883	03/26/2001	Jorg Peter Schur	VONKREISLER.	8618

110 7590 09/24/2003

DANN, DORFMAN, HERRELL & SKILLMAN  
1601 MARKET STREET  
SUITE 2400  
PHILADELPHIA, PA 19103-2307

EXAMINER
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EVANS, CHARESSE L

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/24/2003

8/1

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/743,883

Applicant(s)

SCHUR, JORG PETER

Examiner

Charesse L. Evans

Art Unit

1615

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,24-38 and 45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,24-38 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Action Summary*

Acknowledgement is made of the receipt of applicant's amendment and response, filed July 17, 2003.

Acknowledgement is made of the amendment canceling claims 39-44, filed December 2, 2002.

Claims 1, 24-38 and 45 are active in this action.

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which copies of priority papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "and/or" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 24-38 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedman et al (US 4,446,161) in view of Kumani et al (US 4,927,651). The claims are directed to an antimicrobial composition comprising at least two lipophilic GRAS flavor alcohols.

Friedman teaches a preservative system comprising aromatic monohydric alcohols selected from the group consisting of benzyl alcohol, 2-phenyl ethanol and 3-phenyl-1-propanol (column 3, lines 46-59). The food compositions can be for human or animal consumption (column 4, line 1-2). The provision of an acid medium is accomplished by the addition of acetic, citric, malic and lactic acids (column 7, lines 1-5).

Friedman does not expressly disclose combining the monohydric alcohol with additional polyphenols, however, Kumani supplies this deficiency by teaching a food preserving system comprising adding to the food, plant extracts containing flavonoids or polyphenols (column 1, lines 38-40). The amount of the preserving composition added ranges from 0.1 to 1% by volume (column 3, claim 1).

It would be obvious for one of ordinary skill in the art to combine the teachings of the cited art with the expectation of formulating a food preserving system that is most beneficial.

#### *Allowable Subject Matter*

Claims 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charesse L. Evans whose telephone number is 703-308-6400. The examiner can normally be reached on Monday - Thursday 7:00a - 4:30p; Alternating Fridays 7:00a - 3:30p.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Charesse L. Evans  
Examiner  
Art Unit: 1615

September 22, 2003

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600